

ESTTA Tracking number: **ESTTA550986**

Filing date: **07/29/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92056821
Party	Plaintiff Hollywood Casino Corporation
Correspondence Address	HARA K JACOBS BALLARD SPAHR LLP 1735 MARKET ST, 51ST FLOOR PHILADELPHIA, PA 19103-7599 UNITED STATES jacobsh@ballardspahr.com, cramerp@ballardspahr.com, sternam@ballardspahr.com, phila_tmddocketing@ballardspahr.com
Submission	Other Motions/Papers
Filer's Name	Hara K. Jacobs
Filer's e-mail	jacobsh@ballardspahr.com, cramerp@ballardspahr.com, sternam@ballardspahr.com, phila_tmddocketing@ballardspahr.com
Signature	/Hara K. Jacobs/
Date	07/29/2013
Attachments	HOLLYWOOD BURGER (Cancellation No. 92056821).pdf(1173254 bytes )

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

HOLLYWOOD CASINO CORPORATION,	:	
	:	
Petitioner	:	
	:	
	:	Registration No. 4,026,623
v.	:	
	:	Cancellation No. 92056821
	:	
HOLLYWOOD BURGER HOLDINGS, INC.	:	
	:	
Respondent.	:	

**PETITIONER'S MEMORANDUM OF LAW IN RESPONSE TO  
RESPONDENT'S MOTION FOR SUMMARY JUDGMENT**

Petitioner Hollywood Casino Corp. ("Hollywood Casino" or "Petitioner"), respectfully submits the foregoing memorandum of law in response the motion for summary judgment by Respondent, Hollywood Burger Holdings, Inc. ("Hollywood Burger" or "Respondent") seeking cancellation of its own federal registration for the mark HOLLYWOOD BURGER, Registration No. 4,026,623 (the "Registration").

**INTRODUCTION**

This is an unusual situation. Respondent has filed motions for summary judgment asking the Board to render judgment against itself and to cancel its three registrations.<sup>1</sup> Respondent's motions concede that although Respondent procured three separate federal registrations for marks for restaurant services, and separately filed a use-based application for a mark for restaurant services, it has never had a food service establishment of any kind in the United States and, therefore, has never used any of its marks in commerce. Petitioner agrees that summary

---

<sup>1</sup> Petitioner instituted three cancellation proceedings against Registrant's marks HOLLYWOOD BURGER, HOLLYWOOD BURGER (and design) and HOLLYWOOD CAFÉ on the grounds of non-use, fraud, and likelihood of confusion. (See Cancellation Nos. 92056821, 92056873 and 92056820). The pleadings and motions in each of the proceedings are nearly identical.

judgment should be entered against Respondent on Petitioner's claim for non-use and that all three registrations should be canceled.

Respondent's motions for summary judgment, however, do not stop there. Respondent goes on to seek additional relief to which Respondent is indisputably not entitled and which is contrary to the most basic principles of federal civil procedure. Respondent requests that the final judgment entered against it as a result of its motions for summary judgment be without prejudice and that such judgment result in no *res judicata* effect on any future applications. Petitioner opposes Respondent's improper request for two reasons. First, summary judgment is a final disposition on the merits that is always with prejudice and, as such, has *res judicata* effect. Second, to the extent Respondent is seeking an opinion from the Board speculating on the potential future application of the *res judicata* effect of its final judgment to a potential future dispute between the parties about trademark applications that have not been published for opposition (and may never be published for opposition), that request must be denied because Respondent is seeking an advisory opinion, which is expressly prohibited under federal jurisprudence and by TBMP § 605.03(f).

Respondent now (finally) concedes that it obtained three federal registrations for marks that it has never used in commerce. Because it is undisputed that Respondent has never used any of its marks in commerce within the meaning of 15 U.S.C. § 1127, summary judgment should be entered against Respondent on Petitioner's claim for non-use, resulting in a judgment with prejudice against Respondent, and Respondent's Registration should be cancelled. Petitioner agrees that its claims for fraud and likelihood of confusion should be dismissed without prejudice because further litigation of those claims at this juncture serves no purpose in light of the cancellation of the Registration that is the subject of those claims.

## **FACTUAL BACKGROUND**

The dispute between the parties began in late 2012 when Hollywood Casino became aware of an application by Hollywood Burger to register the mark LET'S GO TO HOLLYWOOD! for restaurant services based on Hollywood Burger's alleged use of that mark in commerce. (Opposition No. 91208417, Notice of Opposition dated December 12, 2012, attached hereto as Exhibit A.) After conducting an investigation, Hollywood Casino learned that Hollywood Burger had not used the mark in commerce within the meaning of 15 U.S.C. § 1127 because Hollywood Burger never had a restaurant in the United States. (*Id.* at ¶¶ 19-21.) Through this same investigation, Hollywood Casino learned that Hollywood Burger had procured registrations for three additional marks in the United States for restaurant services and that Hollywood Burger was marketing its concept to potential franchisees by emphasizing that it had trademark registrations in the United States. (*Id.* at ¶ 22.) Hollywood Casino subsequently filed a Notice of Opposition on the grounds of fraud, non-use and likelihood of confusion based on Hollywood Casino's incontestable registrations for its HOLLYWOOD CASINO mark (the "Hollywood Casino Marks"). In response to Hollywood Casino's Notice of Opposition, Hollywood Burger withdrew its application without consent. (Opposition No. 91208417, Withdrawal of Application Ser. No. 85/509,130, attached hereto as Exhibit B.)

On February 21, 2013, Hollywood Casino filed its Petition to Cancel Registration No. 4,026,623 for the mark HOLLYWOOD BURGER for "Fast-food restaurants; Restaurant services featuring sandwiches" in Class 43 ("Respondent's Restaurant Services") on the grounds of fraud, non-use, and likelihood of confusion with Petitioner's incontestable registrations for its Hollywood Casino Marks.

In its initial Petition to Cancel, Petitioner laid out, in detail, the facts proving that Respondent had never used its marks in commerce, and attached documentary evidence in support of its allegations. Petitioner's allegations included statements made on Respondent's own website acknowledging that it had only two restaurants – one located in Argentina and a newly opened restaurant in the United Arab Emirates – with no locations of any kind in the United States. (Dkt. No. 1 at ¶ 23.) Petitioner concluded by stating that “[b]ecause Respondent has not used the mark HOLLYWOOD BURGER in commerce, as defined in 15 U.S.C. § 1127, for any of the services listed in the Registration, the Registration is void *ab initio*.” (*Id.* at ¶ 24.)

Incredibly, Respondent answered the Petition to Cancel by outright denying that it had not used its mark in commerce. (Dkt. No. 4 at ¶¶ 22, 24.) Respondent's denial, in violation of Rule 11 of the Federal Rules of Civil Procedure, required Petitioner to expend further resources and file an Amended Petition to Cancel with supplemental factual allegations about Respondent's non-use of its mark in the United States. (*See* Dkt. No. 6 at ¶¶ 24-29.) Shortly after Respondent filed its Answer to the Amended Petition to Cancel, and before any discovery had taken place, Respondent filed the instant Motion for Summary Judgment.

### **ARGUMENT**

The Board should enter summary judgment against Respondent on Petitioner's claim for non-use and cancel the Registration. The resulting judgment – a judgment on the merits – is necessarily with prejudice and has *res judicata* effect. The precise parameters of the *res judicata* effect can only be determined by the tribunal before which it is ultimately raised (if ever), and not by the Board in this proceeding.

Petitioner alleged that Respondent never used its HOLLYWOOD BURGER mark in commerce within the meaning of 15 U.S.C. § 1127 for any of the services listed in the

Registration and, therefore, the Registration should be canceled. (Dkt. No. 6 at ¶ 30.) Though it denied this allegation in its Answer (Dkt. No. 7 at ¶ 30), Respondent has now moved for summary judgment against itself and concedes that, indeed, it has not used the mark that is the subject of the Registration in commerce within the meaning of 15 U.S.C. § 1127 and, therefore, its Registration “must be canceled.” (Respondent’s Br. at 5.)

Because it is undisputed that Respondent has not used its mark in commerce that is the subject of the Registration, summary judgment should be entered against Respondent and the Registration should be canceled. The entry of summary judgment is, of course, with prejudice and has *res judicata* effect because it is a decision on the merits. Wright, Miller & Kane Federal Practice and Procedure: Civil 3d § 2713; see Vink v. Hendrikus Johannes Schijf et al., 839 F.2d 676, 677, 5 USPQ2d 1728, 1729 (Fed. Cir. 1988) (stating that summary judgment “is a decision on the merits with *res judicata* effect”); Rivera v. PNS Stores, Inc., 647 F.3d 188, 195 (5th Cir. 2011) (stating that “a motion for summary judgment is necessarily granted with prejudice”) (internal quotation omitted).

Respondent’s request, that the Board enter summary judgment against it and cancel its Registration but that the judgment entered not result in any *res judicata* effect on any future applications, is a legal non sequitur. The entry of summary judgment is always with prejudice. Wright, Miller & Kane Federal Practice and Procedure: Civil 3d § 2713; Tuley v. Heyd, Jr., 482 F.2d 590, 594 n.2 (5th Cir. 1973) (“Of course, a summary judgment is always “with prejudice.” It “is on the merits and purports to have a *res judicata* effect on any later action.” (quoting Wright, Miller & Kane § 2713)); Wheeler v. Hurdman, 825 F.2d 257, 259 n.5 (10th Cir. 1987) (“A grant of summary judgment resolves the issue on the merits and thus is with prejudice.”) To the extent that Respondent is asking the Board to render a decision today concerning the future

potential *res judicata* effect of its judgment on future hypothetical legal proceedings, the facts about which are currently unknown, that request must be denied. Federal jurisprudence prohibits federal courts from rendering advisory opinions – opinions advising what the law would be based on a hypothetical state of facts. Aetna Life Ins. Co. v. Haworth, 300 U.S. 227, 240-241 (1937). Likewise, the Board expressly prohibits the rendering of advisory opinions. TBMP § 605.03(f). “[T]he Board does not issue advisory opinions.” Id.

Any decision opining on the future preclusive effect of that decision is an impermissible advisory opinion because it requires the tribunal to rule on a future set of circumstances that has not yet occurred. Brown & Root Braun, Inc. v. Bogan, Inc., 54 Fed. Appx. 542, 552 (3d Cir. 2002) (refusing to render an opinion on the *res judicata* effect of its decision on another court because “any holding about the *res judicata* effect of this ruling in another court would be an impermissible advisory opinion”); Kunselman v. Bd. of Ed. Of Western Reserve Local School District, Civ. No. 92-3385, 1993 U.S. App. LEXIS 14455 at \*9 (6th Cir. June 10, 1993) (refusing to opine on the future preclusive effect of a dismissal because “[t]o pronounce our views on the preclusive effects of our decision . . . would constitute a non-binding advisory opinion”) (attached hereto as Appendix A). Respondent’s request here – that the Board opine on the future *res judicata* effect of its judgment – is a request for an advisory opinion, which is barred by both federal civil procedure and the Board’s rules. Accordingly, the Board should refuse to do so.

### **CONCLUSION**

The Board should grant summary judgment in favor of Petitioner on its claim for non-use and cancel the Registration. The Board should dismiss Petitioner's claims for fraud and likelihood of confusion without prejudice because the subject Registration will be canceled, thus negating the purpose of further litigation concerning that Registration at this time.

Dated: July 29, 2013

Respectfully submitted,

By: /Hara K. Jacobs/

Hara K. Jacobs

Andrew M. Stern

BALLARD SPAHR LLP

1735 Market Street, 51st Floor

Philadelphia, Pennsylvania 19103-7599

(215) 665-8500

ATTORNEYS FOR PETITIONER



**CERTIFICATE OF SERVICE**

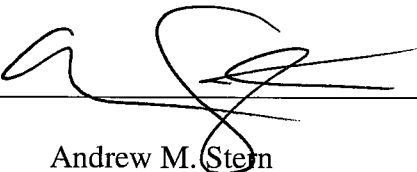
I hereby certify that a true and correct copy of this Petitioner's Response to Respondent's Motion for Summary Judgment was served on the Attorney of Record for the Respondent of Registration No. 4,026,623 by First Class U.S. Mail on the date below:

THEODORE R. REMAKLUS, ESQ.  
WOOD, HERRON & EVANS, LLP  
2700 CAREW TOWER  
441 VINE ST.  
CINCINNATI, OH 45202-2917

ERIC S. HUTNER, ESQ.  
HUTNER KLARISH LLP  
1359 BROADWAY RM 2001  
NEW YORK, NY 10018-7833

Dated: \_\_\_\_\_

7/29/13

  
\_\_\_\_\_  
Andrew M. Stern

# **EXHIBIT A**

ESTTA Tracking number: **ESTTA510610**

Filing date: **12/12/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

**Opposer Information**

Name	Hollywood Casino Corporation
Granted to Date of previous extension	12/12/2012
Address	825 Berkshire Boulevard, Suite 200 Wyomissing, PA 19610 UNITED STATES

Correspondence information	Hollywood Casino Corporation 825 Berkshire Boulevard, Suite 200 Wyomissing, PA 19610 UNITED STATES jacobsh@ballardspahr.com, sternam@ballardspahr.com, shorem@ballardspahr.com, phila_tmdocketing@ballardspahr.com
----------------------------	---

**Applicant Information**

Application No	85509130	Publication date	08/14/2012
Opposition Filing Date	12/12/2012	Opposition Period Ends	12/12/2012
Applicant	Hollywood Burger Holdings, Inc. c/o Scott L. Mathis 135 Fifth Avenue New York, NY 10010 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 043. First Use: 2011/08/16 First Use In Commerce: 2011/08/16 All goods and services in the class are opposed, namely: Fast-food restaurant services; Restaurant services featuring sandwiches
--

**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act section 2(d)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Other	Applicant has not used the mark in commerce. See Barbara's Bakery Inc. v. Landesman, 82 USPQ2d 1283, 1289 (TTAB 2007) (registration is allowed only as to goods upon which the mark is being used as of the application filing date, and an opposition will be sustained as to any of the identified goods as to which it is shown that no use had been made as of the application filing date).

## Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1851759	Application Date	05/05/1993
Registration Date	08/30/1994	Foreign Priority Date	NONE
Word Mark	HOLLYWOOD CASINO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 1993/06/17 First Use In Commerce: 1993/06/17 casino services		

U.S. Registration No.	1903858	Application Date	05/05/1993
Registration Date	07/04/1995	Foreign Priority Date	NONE
Word Mark	HOLLYWOOD CASINO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1994/09/09 First Use In Commerce: 1994/09/09 hotel services		

Attachments	Scan-0079.pdf ( 27 pages )(330599 bytes )
-------------	---

## Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Hara K. Jacobs/
Name	Hollywood Casino Corporation
Date	12/12/2012

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

HOLLYWOOD CASINO CORPORATION :  
Opposer :  
:  
v. :  
:  
Opposition No. \_\_\_\_\_  
:  
HOLLYWOOD BURGER HOLDINGS, INC. :  
Applicant. :

**NOTICE OF OPPOSITION**

In the matter of the application of Hollywood Burger Holdings, Inc. ("Applicant") for registration of the mark LET'S GO TO HOLLYWOOD!, Application Serial No. 85/509,130 (the "Application"), filed January 5, 2012 and published for opposition in the Official Gazette on August 14, 2012:

Hollywood Casino Corporation, a Delaware corporation having a place of business at 825 Berkshire Boulevard, Suite 200, Wyomissing, Pennsylvania 19610 (the "Opposer"), believes that it will be damaged by the registration of the mark shown in the above-identified Application and hereby opposes the same. The grounds for opposition are as follows:

1. The Opposer is, and has for many years, itself and through its predecessor in interest and in title, engaged in the hotel, casino and gaming businesses.
2. Opposer has adopted and used the HOLLYWOOD CASINO mark and the Hollywood Casino trade name since at least as early as June 17, 1993 in connection with casino services, and since at least as early as September 9, 1994 in connection with hotel services, and is owner of the incontestable federal Registration Numbers 1,851,759 and 1,903,858 for the mark HOLLYWOOD CASINO for hotel services and casino services, all collectively referred to as the "Hollywood Casino Marks." Attached hereto as Exhibits A and B are current TSDR report

printouts from the electronic database records of the USPTO showing the current status and title of Registration Numbers 1,851,759 and 1,903,858.

3. Opposer offers, among other things, hotel services, casino services, restaurant and bar services, gaming facilities for patrons to play slot machines and video lottery terminals and other games of chance, and other casino services and related entertainment services under the Hollywood Casino Marks (collectively, "Opposer's Services").

4. Applicant seeks to register the mark LET'S GO TO HOLLYWOOD! for fast-food restaurant services and restaurant services featuring sandwiches in Class 43, as evidenced by the publication of said mark in the Official Gazette on August 14, 2012.

5. The Application for the services herein opposed was filed on January 5, 2012 based on Applicant's alleged first use of the mark LET'S GO TO HOLLYWOOD! in commerce on August 16, 2011.

6. Opposer's dates of first use in commerce for each of the Hollywood Casino Marks precede Applicant's alleged date of first use in commerce for the mark LET'S GO TO HOLLYWOOD!.

7. The registrations for the Hollywood Casino Marks are valid, subsisting and are incontestable.

8. Opposer's use of the Hollywood Casino Marks has been continuous, exclusive and commercially significant for many years in connection with Opposer's Services.

9. Opposer's Hollywood Casino Marks are valid and have been valid and in continuous use since at least their respective dates of first use and have not been abandoned.

10. Because of the substantial investment of time and resources nationally to promote, advertise, and enforce the Hollywood Casino Marks, consumers have come to associate the Hollywood Casino Marks exclusively with Opposer's Services.

11. By virtue of Opposer's continuous use in commerce of the Hollywood Casino Marks in connection with Opposer's Services, such services have become favorably known to the relevant trade and public under such marks.

12. In the Application for the services herein opposed, there are no restrictions on trade channels, so it must be presumed that the services of the Application identified will travel through all trade channels appropriate for services of that type.

13. On information and belief, Applicant's services for fast-food restaurant services and restaurant services featuring sandwiches in Class 43, and Opposer's Services are intended to be marketed through overlapping channels of trade and are intended to be sold to overlapping classes of purchasers.

14. Applicant's LET'S GO TO HOLLYWOOD! mark as used in association with fast-food restaurant services and restaurant services featuring sandwiches in Class 43 is confusingly similar to the Hollywood Casino Marks established by Opposer because the marks are similar in sound, appearance and overall commercial impression.

15. Applicant's LET'S GO TO HOLLYWOOD! mark as applied to the identification of services in the Application so resembles the Hollywood Casino Marks as applied to Opposer's Services that it is likely to cause confusion, mistake and/or deception.

16. If Applicant is permitted to register the mark LET'S GO TO HOLLYWOOD! for the services set forth in Class 43 of the Application, confusion of the relevant trade and public is likely to result, which will damage and injure Opposer.

17. Any defect, objection to, or fault found with Applicant's services under the LET'S GO TO HOLLYWOOD! mark would necessarily reflect on and seriously injure the reputation that Opposer has established for its services and business.

18. Applicant's statement in its application that the mark LET'S GO TO HOLLYWOOD! was in use in commerce as of August 16, 2011, and was in use in commerce as of the date of the Application – January 5, 2012, is a false, misrepresentation of fact because Applicant does not offer restaurant services of any kind in the United States.

19. Opposer has performed an investigation into Applicant's services. That investigation revealed that Applicant does not have any restaurants in the United States and did not have any restaurants in the United States at the time it filed its application.

20. Applicant has publicly stated both on its website and in press releases that Applicant has only a single restaurant in the country of Argentina, which is its first location, and that Applicant's next planned locations will be a restaurant located in the United Arab Emirates and a second restaurant in the country of Argentina. A copy of the "Locations" page from Applicant's website containing the aforementioned statements is attached as Exhibit C hereto.

21. Because Applicant has not used the mark LET'S GO TO HOLLYWOOD! in commerce, as defined in 15 U.S.C. § 1127, for any of the services listed in the Application, the application is void *ab initio*.

22. Opposer's investigation further revealed that Applicant is marketing its restaurant concept to potential franchisees by emphasizing that it has a trademark registration in the United States.

23. On information and belief, and upon the results of Opposer's investigation, Applicant knowingly made false, material misrepresentations of fact in submitting its



Application with the intent to deceive the U.S. Patent & Trademark Office in procuring a federal registration for the mark LET'S GO TO HOLLYWOOD! because Applicant knew that its mark, LET'S GO TO HOLLYWOOD!, was not in use in commerce, as defined in 15 U.S.C. § 1127, in connection with the services referenced in the Application at the time the Application was filed, or on its alleged date of first of August 16, 2011.

24. If Applicant is granted a registration for the mark herein opposed, it would obtain thereby at least a *prima facie* exclusive right to use the mark. Such registration would be a source of damage and injury to Opposer.

WHEREFORE, Hollywood Casino Corporation prays that registration of the mark of Application Serial No. 85/509,130 in International Class 43 be refused and that this opposition be sustained.

The required fee of \$300 may be charged to Deposit Account No. 02-0755 and any overpayment may be credited to this account.

Dated: December 12, 2012

Respectfully submitted,

By: /Hara K. Jacobs/  
Hara K. Jacobs  
Andrew M. Stern  
BALLARD SPAHR LLP  
1735 Market Street, 51st Floor  
Philadelphia, Pennsylvania 19103-7599  
(215) 665-8500

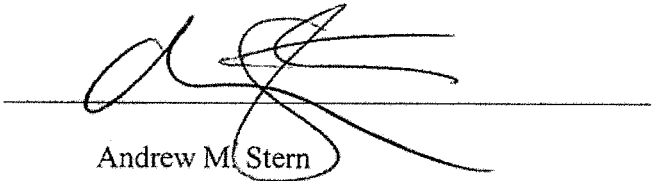
ATTORNEYS FOR OPPOSER

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of this Notice of Opposition was served on the Attorney of Record for the Applicant of Application Serial No. 85/509,130 by First Class U.S. Mail on the date below:

ERIC S. HUTNER  
HUTNER KLARISH LLP  
1359 BROADWAY RM 2001  
NEW YORK, NY 10018-7833

Dated: 12/12/12

  
\_\_\_\_\_  
Andrew M. Stern

## **EXHIBIT A**

STATUS DOCUMENTS

[Back to Search](#)[Print](#)

Generated on: This page was generated by TSDR on 2012-12-12 11:31:15 EST

Mark: HOLLYWOOD CASINO

US Serial Number: 74801556

Application Filing Date: May 05, 1993

US Registration Number: 1851759

Registration Date: Aug. 30, 1994

Register: Principal

Mark Type: Service Mark

Status: A Section 15 declaration has been acknowledged.

Status Date: Jul. 01, 2008

Publication Date: Jun. 07, 1994

**Mark Information**

Mark Literal Elements: HOLLYWOOD CASINO

Standard Character Claim: No

Mark Drawing Type: 1 - TYPESET WORD(S) /LETTER(S) /NUMBER(S)

Disclaimer: "CASINO"

**Related Properties Information**Claimed Ownership of US 74388870

Registrations:

Child Of: 74388870**Goods and Services****Note:**

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks "\*" identify additional (new) wording in the goods/services.

For: casino services

International Class: 041 - Primary Class

U.S Class: 107

Class Status: ACTIVE

Basis: 1(a)

First Use: Jun. 17, 1993

Use in Commerce: Jun. 17, 1993

**Basis Information (Case Level)**

Filed Use: No	Currently Use: Yes	Amended Use: No
Filed ITU: Yes	Currently ITU: No	Amended ITU: No
Filed 44D: No	Currently 44D: No	Amended 44D: No
Filed 44E: No	Currently 44E: No	Amended 44E: No
Filed 66A: No	Currently 66A: No	
Filed No Basis: No	Currently No Basis: No	

**Current Owner(s) Information**

Owner Name: Hollywood Casino Corporation

Owner Address: 825 BERKSHIRE BOULEVARD, STE 200  
WYOMISSING, PENNSYLVANIA 19610  
UNITED STATES

Legal Entity Type: CORPORATION

State or Country Where  
Organized: DELAWARE

## Attorney/Correspondence Information

## Attorney of Record

Attorney Name: Patricia G. Cramer

Docket Number: 894428

## Correspondent

Correspondent: Patricia G. Cramer

Name/Address: Ballard Spahr Andrews & Ingersoll, LLP  
1735 Market Street, 51st Floor  
Philadelphia, PENNSYLVANIA 19103-7599  
UNITED STATES

Phone: 215-864-8607

Fax: 215-864-9744

Correspondent e-mail: [cramerp@ballardspahr.com](mailto:cramerp@ballardspahr.com)Correspondent e-mail Yes  
Authorized:

Domestic Representative - Not Found

## Prosecution History

Date	Description	Proceeding Number
Jul. 20, 2011	ASSIGNMENT OF OWNERSHIP NOT UPDATED AUTOMATICALLY	
Jul. 01, 2008	REGISTERED - SEC. 15 ACKNOWLEDGED	66607
Jun. 17, 2008	ASSIGNED TO PARALEGAL	66607
Jun. 06, 2008	TEAS SECTION 15 RECEIVED	
Jul. 20, 2007	CASE FILE IN TIGRS	
Dec. 12, 2005	ATTORNEY REVOKED AND/OR APPOINTED	
Dec. 12, 2005	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	
Jan. 13, 2004	REGISTERED AND RENEWED (FIRST RENEWAL - 10 YRS)	
Jan. 13, 2004	REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED	
Nov. 03, 2003	REGISTERED - COMBINED SECTION 8 (10-YR) & SEC. 9 FILED	
Apr. 29, 2003	CANCELLATION TERMINATED NO. 999999	30800
Apr. 29, 2003	CANCELLATION DISMISSED NO. 999999	30800
Apr. 18, 2003	CANCELLATION GRANTED NO. 999999	30800
Oct. 30, 2000	REGISTERED - SEC. 8 (6-YR) ACCEPTED	
Aug. 18, 2000	REGISTERED - SEC. 8 (6-YR) FILED	
Aug. 25, 2000	CANCELLATION INSTITUTED NO. 999999	30800
Aug. 30, 1994	REGISTERED-PRINCIPAL REGISTER	
Jun. 07, 1994	PUBLISHED FOR OPPOSITION	
May 06, 1994	NOTICE OF PUBLICATION	
Mar. 01, 1994	APPROVED FOR PUB - PRINCIPAL REGISTER	
Mar. 01, 1994	USE AMENDMENT ACCEPTED	
Jan. 31, 1994	AMENDMENT TO USE PROCESSING COMPLETE	
Sep. 01, 1993	USE AMENDMENT FILED	
Jan. 10, 1994	DIVISIONAL PROCESSING COMPLETE	
Nov. 22, 1993	PREVIOUS ALLOWANCE COUNT WITHDRAWN	
Sep. 30, 1993	APPROVED FOR PUB - PRINCIPAL REGISTER	
Aug. 23, 1993	EXAMINER'S AMENDMENT MAILED	
Aug. 20, 1993	ASSIGNED TO EXAMINER	67348
Aug. 16, 1993	ASSIGNED TO EXAMINER	59899
Aug. 16, 1993	ASSIGNED TO EXAMINER	59899

## Maintenance Filings or Post Registration Information

Affidavit of Continued Use: Section 8 - Accepted

Affidavit of Incontestability: Section 15 - Accepted

Renewal Date: Aug. 30, 2004

**TM Staff and Location Information**

TM Staff Information - None

**File Location**

Current Location: POST REGISTRATION

Date in Location: Jul. 01, 2008

**Assignment Abstract of Title Information****Summary**

Total Assignments: 8

Conveyance Filter

Registrant: Hollywood Casino Corporation

**Assignment 1 of 8**

Conveyance: SECURITY INTEREST

Reel/Frame: 1405/0572

Pages: 28

Date Recorded: Oct. 20, 1995

Supporting Documents: No Supporting Documents

**Assignor**Name: HOLLYWOOD CASINO CORPORATION

Execution Date: Oct. 17, 1995

Legal Entity Type: CORPORATION

State or Country Where DELAWARE

Organized:

**Assignee**Name: SHAWMUT BANK

Legal Entity Type: NATIONAL ASSOCIATION

State or Country Where No Place Where Organized Found

Organized:

Address: ONE FEDERAL STREET  
BOSTON, MASSACHUSETTS 02211**Correspondent**

Correspondent Name: VINSON &amp; ELKINS L.L.P.

Correspondent Address: ANDREW G. DINOVO  
2300 FIRST CITY TOWER  
1001 FANNIN STREET  
HOUSTON, TX 77002

Domestic Representative - Not Found

**Assignment 2 of 8**

Conveyance: SECURITY INTEREST

Reel/Frame: 1904/0445

Pages: 8

Date Recorded: May 24, 1999

Supporting Documents: assignment-tm-1904-0445.pdf**Assignor**Name: HOLLYWOOD CASINO CORPORATION

Execution Date: May 19, 1999

Legal Entity Type: CORPORATION

State or Country Where DELAWARE

Organized:

**Assignee**Name: STATE STREET BANK AND TRUST COMPANY, AS TRUSTEE

Legal Entity Type: CHARTERED TRUST COMPANY

State or Country Where MASSACHUSETTS

Organized:

Address: TWO INTERNATIONAL PLACE, 4TH FLOOR  
BOSTON, MASSACHUSETTS 02110**Correspondent**

Correspondent Name: LATHAM &amp; WATKINS

Correspondent Address: JOYCE A. KIEL  
SUITE 5800 SEARS TOWER  
CHICAGO, IL 60606

Domestic Representative - Not Found

**Assignment 3 of 8**

Conveyance: SECURITY AGREEMENT

Reel/Frame: 2693/0357

Pages: 87

Date Recorded: Mar. 19, 2003

Supporting Documents: assignment-tm-2693-0357.pdf

Assignor

Name: HOLLYWOOD CASINO CORPORATION

Execution Date: Mar. 03, 2003

Legal Entity Type: CORPORATION

State or Country Where  
Organized: DELAWARE

Assignee

Name: BEAR STEAMS CORPORATE LENDING INC.State or Country Where  
Organized: NEW YORK

Legal Entity Type: CORPORATION

Address: 383 MADISON AVENUE  
AS COLLATERAL AGENT  
NEW YORK, NEW YORK 10179

Correspondent

Correspondent Name: FEDERAL RESEARCH COMPANY, LLC

Correspondent Address: MAUREEN P. MURPHY  
1030 15TH STREET, NW, SUITE 920  
WASHINGTON, DC 20005

Domestic Representative - Not Found

**Assignment 4 of 8**

Conveyance: RELEASE OF SECURITY INTEREST

Reel/Frame: 2694/0203

Pages: 8

Date Recorded: Mar. 19, 2003

Supporting Documents: assignment-tm-2694-0203.pdf

Assignor

Name: U.S. BANK NATIONAL ASSOCIATION (AS  
SUCCESSOR TRUSTEE TO STATE STREET  
BANK AND TRUST COMPANY)

Execution Date: Mar. 03, 2003

Legal Entity Type: BANK

State or Country Where  
Organized: No Place Where Organized Found

Assignee

Name: HOLLYWOOD CASINO CORPORATIONState or Country Where  
Organized: DELAWARE

Legal Entity Type: CORPORATION

Address: WYOMISSING PROFESSIONAL CENTER  
825 BERKSHIRE BLVD., STE. 200  
WYOMISSING, PENNSYLVANIA 19610

Correspondent

Correspondent Name: FEDERAL RESEARCH COMPANY, LLC

Correspondent Address: MAUREEN P. MURPHY  
1030 15TH STREET, NW, SUITE 920  
WASHINGTON, DC 20005

Domestic Representative - Not Found

**Assignment 5 of 8**

Conveyance: CONFIRMATION OF TERMINATION AND RELEASE OF SECURITY INTEREST IN TRADEMARKS

Reel/Frame: 3103/0017

Pages: 14

Date Recorded: Jun. 13, 2005

Supporting Documents: assignment-tm-3103-0017.pdf

Assignor

Name: U.S. BANK NATIONAL ASSOCIATION, AS  
SUCCESSOR TRUSTEE

Execution Date: Sep. 08, 2004

Legal Entity Type: NATIONAL ASSOCIATION

State or Country Where  
Organized: No Place Where Organized Found

Assignee

Name: HOLLYWOOD CASINO CORPORATION

Legal Entity Type: CORPORATION

State or Country Where  
Organized: DELAWARE

Address: 825 BERKSHIRE BLVD, SUITE 200  
WYOMISSING, PENNSYLVANIA 19610

Correspondent

Correspondent Name: PATRICIA G. CRAMER

Correspondent Address: 1735 MARKET STREET, 51ST FLOOR  
PHILADELPHIA, PA 19103-7599

Domestic Representative - Not Found

**Assignment 6 of 8**

Conveyance: SECURITY AGREEMENT

Reel/Frame: 3175/0228

Pages: 28

Date Recorded: Oct. 14, 2005

Supporting Documents: assignment-tm-3175-0228.pdf

Assignor

Name: ARGOSY GAMING COMPANY

Execution Date: Oct. 03, 2005

Legal Entity Type: CORPORATION

State or Country Where  
Organized: DELAWARE

Name: PENN NATIONAL GAMING INC

Execution Date: Oct. 03, 2005

Legal Entity Type: CORPORATION

State or Country Where  
Organized: PENNSYLVANIA

Name: PENNSYLVANIA NATIONAL TURF CLUB, INC.

Execution Date: Oct. 03, 2005

Legal Entity Type: CORPORATION

State or Country Where  
Organized: PENNSYLVANIA

Name: HOLLYWOOD CASINO CORPORATION

Execution Date: Oct. 03, 2005

Legal Entity Type: CORPORATION

State or Country Where  
Organized: DELAWARE

Name: LOUISIANA CASINO CRUISES, INC

Execution Date: Oct. 03, 2005

Legal Entity Type: CORPORATION

State or Country Where  
Organized: LOUISIANA

Name: BSL, INC

Execution Date: Oct. 03, 2005

Legal Entity Type: CORPORATION

State or Country Where  
Organized: MISSISSIPPI

Name: BTN, INC

Execution Date: Oct. 03, 2005

Legal Entity Type: CORPORATION

State or Country Where  
Organized: MISSISSIPPI

Assignee

Name: DEUTSCHE BANK TRUST COMPANY

Legal Entity Type: COLLATERAL AGENT

State or Country Where  
Organized: No Place Where Organized Found



Address: 60 WALL STREET  
AMERICAS, AS COLLATERAL AGENT  
NEW YORK, NEW YORK 10005

**Correspondent**

Correspondent Name: CORPORATE SERVICES CORPORATION  
Correspondent Address: 1133 AVENUE OF THE AMERICAS  
SUITE 3100  
NEW YORK, NY 10036

Domestic Representative - Not Found

**Assignment 7 of 8**

Conveyance: TRADEMARK RELEASE

Reel/Frame: 4584/0012

Pages: 25

Date Recorded: Jul. 15, 2011

Supporting Documents: assignment-tm-4584-0012.pdf

**Assignor**

Name: DEUTSCHE BANK TRUST COMPANY  
AMERICAS, AS COLLATERAL AGENT

Execution Date: Jul. 14, 2011

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

**Assignee**

Name: ARGOSY GAMING COMPANY

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Address: 825 BERKSHIRE BLVD., SUITE 200  
WYOMISSING, PENNSYLVANIA 19610

Name: PENN NATIONAL GAMING, INC.

Legal Entity Type: CORPORATION

State or Country Where Organized: PENNSYLVANIA

Address: 825 BERKSHIRE BLVD., SUITE 200  
WYOMISSING, PENNSYLVANIA 19610

Name: PENNSYLVANIA NATIONAL TURF CLUB, INC.

Legal Entity Type: CORPORATION

State or Country Where Organized: PENNSYLVANIA

Address: 777 HOLLYWOOD DRIVE  
GRANTVILLE, PENNSYLVANIA 17028

Name: LOUISIANA CASINO CRUISES, INC.

Legal Entity Type: CORPORATION

State or Country Where Organized: LOUISIANA

Address: 1717 RIVER ROAD NORTH  
BATON ROUGE, LOUISIANA 70802

Name: HOLLYWOOD CASINO CORPORATION

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Address: 825 BERKSHIRE BLVD., SUITE 200  
WYOMISSING, PENNSYLVANIA 19610

Name: BSL, INC.

Legal Entity Type: CORPORATION

Address: 711 HOLLYWOOD BLVD., BAY  
ST. LOUIS, MISSISSIPPI 39520

State or Country Where MISSISSIPPI  
Organized:

Name: BTN, INC.

Legal Entity Type: CORPORATION

Address: 676 BAYVIEW AVENUE  
BILOXI, MISSISSIPPI 39530

State or Country Where MISSISSIPPI  
Organized:

Correspondent

Correspondent Name: JAMES P. MURPHY, LEGAL ASSISTANT

Correspondent Address: 80 PINE STREET  
CAHILL GORDON & REINDEL LLP  
NEW YORK, NY 10005

Domestic Representative - Not Found

**Assignment 8 of 8**

Conveyance: SECURITY AGREEMENT

Reel/Frame: 4584/0880

Date Recorded: Jul. 18, 2011

Supporting Documents: assignment-tm-4584-0880.pdf

Pages: 27

Assignor

Name: ARGOSY GAMING COMPANY

Legal Entity Type: CORPORATION

Execution Date: Jul. 14, 2011

State or Country Where DELAWARE  
Organized:

Name: PENN NATIONAL GAMING, INC.

Legal Entity Type: CORPORATION

Execution Date: Jul. 14, 2011

State or Country Where PENNSYLVANIA  
Organized:

Name: LV GAMING VENTURES, LLC

Legal Entity Type: CORPORATION

Execution Date: Jul. 14, 2011

State or Country Where NEVADA  
Organized:

Name: PENNSYLVANIA NATIONAL TURF CLUB, INC.

Legal Entity Type: CORPORATION

Execution Date: Jul. 14, 2011

State or Country Where PENNSYLVANIA  
Organized:

Name: HOLLYWOOD CASINO CORPORATION

Legal Entity Type: CORPORATION

Execution Date: Jul. 14, 2011

State or Country Where DELAWARE  
Organized:

Name: BTN, INC.

Legal Entity Type: CORPORATION

Execution Date: Jul. 14, 2011

State or Country Where MISSISSIPPI  
Organized:

Assignee

**Name:** WELLS FARGO BANK, NATIONAL ASSOCIATION, AS COLLATERAL AGENT

**Legal Entity Type:** INC. ASSOCIATION

**State or Country Where** UNITED STATES

**Organized:**

**Address:** 333 S. GRAND AVE, 12TH FLOOR  
LOS ANGELES, CALIFORNIA 90071

**Correspondent**

**Correspondent Name:** JAMES P. MURPHY, LEGAL ASSISTANT

**Correspondent Address:** 80 PINE STREET  
CAHILL GORDON & REINDEL LLP  
NEW YORK, NY 10005

**Domestic Representative - Not Found**

## **EXHIBIT B**

STATUS DOCUMENTS

[Back to Search](#)[Print](#)

Generated on: This page was generated by TSDR on 2012-12-12 11:31:49 EST

Mark: HOLLYWOOD CASINO

US Serial Number: 74388870

Application Filing Date: May 05, 1993

US Registration Number: 1903858

Registration Date: Jul. 04, 1995

Register: Principal

Mark Type: Service Mark

Status: The registration has been renewed.

Status Date: Apr. 24, 2006

Publication Date: Aug. 16, 1994

Notice of Allowance Date: Nov. 08, 1994

**Mark Information**

Mark Literal Elements: HOLLYWOOD CASINO

Standard Character Claim: No

Mark Drawing Type: 1 - TYPESET WORD(S) / LETTER(S) / NUMBER(S)

Disclaimer: "CASINO"

**Related Properties Information**Claimed Ownership of US 74801556

Registrations:

Parent Of: 74801556**Goods and Services****Note:**

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks "\*" identify additional (new) wording in the goods/services.

For: hotel services

International Class: 042 - Primary Class

U.S. Class: 100, 101

Class Status: ACTIVE

Basis: 1(a)

First Use: Sep. 09, 1994

Use in Commerce: Sep. 09, 1994

**Basis Information (Case Level)**

Filed Use: No

Currently Use: Yes

Amended Use: No

Filed ITU: Yes

Currently ITU: No

Amended ITU: No

Filed 44D: No

Currently 44D: No

Amended 44D: No

Filed 44E: No

Currently 44E: No

Amended 44E: No

Filed 66A: No

Currently 66A: No

Filed No Basis: No

Currently No Basis: No

**Current Owner(s) Information**

Owner Name: Hollywood Casino Corporation

Owner Address: Two Galleria Tower, Suite 2200  
13455 Noel Road, L.B. 48  
Dallas, TEXAS 75240  
UNITED STATES

Legal Entity Type: CORPORATION

State or Country Where  
Organized: DELAWARE

## Attorney/Correspondence Information

## Attorney of Record

Attorney Name: Patricia G. Cramer, Roberta Jacobs-Meadway, Jay  
K. Meadway, Richard E. Peirce, Robert H. Lefevre

Docket Number: 894428

## Correspondent

Correspondent PATRICIA G CRAMER ROBERTA JACOBS- MEADW  
Name/Address: BALLARD SPAHR ANDREWS & INGERSOLL LLP  
1735 MARKET ST 51ST FL  
PHILADELPHIA, PENNSYLVANIA 19103-7599  
UNITED STATES

Phone: 215-864-8607

Fax: 215-864-9744

Correspondent e-mail: [cramerp@ballardspahr.com](mailto:cramerp@ballardspahr.com)Correspondent e-mail Yes  
Authorized:

Domestic Representative - Not Found

## Prosecution History

Date	Description	Proceeding Number
Jul. 20, 2011	ASSIGNMENT OF OWNERSHIP NOT UPDATED AUTOMATICALLY	
Jun. 27, 2007	CASE FILE IN TIGRS	
Apr. 24, 2006	REGISTERED AND RENEWED (FIRST RENEWAL - 10 YRS)	68335
Apr. 24, 2006	REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED	
Apr. 24, 2006	ASSIGNED TO PARALEGAL	68335
Dec. 12, 2005	REGISTERED - COMBINED SECTION 8 (10-YR) & SEC. 9 FILED	
Dec. 12, 2005	TEAS SECTION 8 & 9 RECEIVED	
Dec. 12, 2005	ATTORNEY REVOKED AND/OR APPOINTED	
Dec. 12, 2005	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	
Aug. 13, 2001	REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK.	
Jul. 03, 2001	REGISTERED - SEC. 8 (6-YR) & SEC. 15 FILED	
Jul. 04, 1995	REGISTERED-PRINCIPAL REGISTER	
Mar. 29, 1995	ALLOWED PRINCIPAL REGISTER - SOU ACCEPTED	
Mar. 16, 1995	ASSIGNED TO EXAMINER	67348
Mar. 08, 1995	STATEMENT OF USE PROCESSING COMPLETE	
Jan. 13, 1995	USE AMENDMENT FILED	
Nov. 08, 1994	NOA MAILED - SOU REQUIRED FROM APPLICANT	
Aug. 16, 1994	PUBLISHED FOR OPPOSITION	
Jul. 15, 1994	NOTICE OF PUBLICATION	
Mar. 01, 1994	APPROVED FOR PUB - PRINCIPAL REGISTER	
Jan. 27, 1994	CORRESPONDENCE RECEIVED IN LAW OFFICE	
Jan. 10, 1994	DIVISIONAL PROCESSING COMPLETE	
Sep. 01, 1993	DIVISIONAL REQUEST RECEIVED	
Nov. 22, 1993	PREVIOUS ALLOWANCE COUNT WITHDRAWN	
Sep. 30, 1993	APPROVED FOR PUB - PRINCIPAL REGISTER	
Aug. 23, 1993	EXAMINER'S AMENDMENT MAILED	
Aug. 20, 1993	ASSIGNED TO EXAMINER	67348
Aug. 16, 1993	ASSIGNED TO EXAMINER	59899
Aug. 16, 1993	ASSIGNED TO EXAMINER	59899

## Maintenance Filings or Post Registration Information

Affidavit of Continued Use: Section 8 - Accepted

Affidavit of Incontestability: Section 15 - Accepted

Renewal Date: Jul. 04, 2005

**TM Staff and Location Information**

TM Staff Information - None

File Location

Current Location: SCANNING ON DEMAND

Date in Location: Jun. 27, 2007

**Assignment Abstract of Title Information**

Summary

Conveyance Filter

Total Assignments: 9

Registrant: Hollywood Casino Corporation

**Assignment 1 of 9**

Conveyance: SECURITY INTEREST

Reel/Frame: 1406/0572

Pages: 28

Date Recorded: Oct. 20, 1995

Supporting Documents: No Supporting Documents

Assignor

Name: HOLLYWOOD CASINO CORPORATION

Execution Date: Oct. 17, 1995

Legal Entity Type: CORPORATION

State or Country Where DELAWARE

Organized:

Assignee

Name: SHAWMUT BANK

Legal Entity Type: NATIONAL ASSOCIATION

State or Country Where No Place Where Organized Found

Organized:

Address: ONE FEDERAL STREET  
BOSTON, MASSACHUSETTS 02211

Correspondent

Correspondent Name: VINSON &amp; ELKINS L.L.P.

Correspondent Address: ANDREW G. DINOVO  
2300 FIRST CITY TOWER  
1001 FANNIN STREET  
HOUSTON, TX 77002

Domestic Representative - Not Found

**Assignment 2 of 9**

Conveyance: SECURITY INTEREST

Reel/Frame: 1904/0445

Pages: 8

Date Recorded: May 24, 1999

Supporting Documents: assignment-tm-1904-0445.pdf

Assignor

Name: HOLLYWOOD CASINO CORPORATION

Execution Date: May 19, 1999

Legal Entity Type: CORPORATION

State or Country Where DELAWARE

Organized:

Assignee

Name: STATE STREET BANK AND TRUST COMPANY, AS TRUSTEE

Legal Entity Type: CHARTERED TRUST COMPANY

State or Country Where MASSACHUSETTS

Organized:

Address: TWO INTERNATIONAL PLACE, 4TH FLOOR  
BOSTON, MASSACHUSETTS 02110

Correspondent

Correspondent Name: LATHAM &amp; WATKINS

Correspondent Address: JOYCE A. KIEL  
SUITE 5800 SEARS TOWER  
CHICAGO, IL 60606

Domestic Representative - Not Found

**Assignment 3 of 9**

Conveyance: SECURITY AGREEMENT

Reel/Frame: 2693/0367

Date Recorded: Mar. 19, 2003

Supporting Documents: assignment-tm-2693-0367.pdf

Assignor

Name: HOLLYWOOD CASINO CORPORATION

Legal Entity Type: CORPORATION

Assignee

Name: BEAR STEAMS CORPORATE LENDING INC.

Legal Entity Type: CORPORATION

Address: 383 MADISON AVENUE  
AS COLLATERAL AGENT  
NEW YORK, NEW YORK 10179

Correspondent

Correspondent Name: FEDERAL RESEARCH COMPANY, LLC

Correspondent Address: MAUREEN P. MURPHY  
1030 15TH STREET, NW, SUITE 920  
WASHINGTON, DC 20005

Domestic Representative - Not Found

**Assignment 4 of 9**

Conveyance: RELEASE OF SECURITY INTEREST

Reel/Frame: 2694/0203

Date Recorded: Mar. 19, 2003

Supporting Documents: assignment-tm-2694-0203.pdf

Assignor

Name: U.S. BANK NATIONAL ASSOCIATION (AS  
SUCCESSOR TRUSTEE TO STATE STREET  
BANK AND TRUST COMPANY)

Legal Entity Type: BANK

Assignee

Name: HOLLYWOOD CASINO CORPORATION

Legal Entity Type: CORPORATION

Address: WYOMISSING PROFESSIONAL CENTER  
825 BERKSHIRE BLVD., STE. 200  
WYOMISSING, PENNSYLVANIA 19610

Correspondent

Correspondent Name: FEDERAL RESEARCH COMPANY, LLC

Correspondent Address: MAUREEN P. MURPHY  
1030 15TH STREET, NW, SUITE 920  
WASHINGTON, DC 20005

Domestic Representative - Not Found

**Assignment 5 of 9**

Conveyance: CONFIRMATION OF TERMINATION AND RELEASE OF SECURITY INTEREST IN TRADEMARKS

Reel/Frame: 3103/0017

Date Recorded: Jun. 13, 2005

Supporting Documents: assignment-tm-3103-0017.pdf

Assignor

Name: U.S. BANK NATIONAL ASSOCIATION, AS  
SUCCESSOR TRUSTEE

Legal Entity Type: NATIONAL ASSOCIATION

Assignee

Pages: 87

Execution Date: Mar. 03, 2003

State or Country Where Organized: DELAWARE

State or Country Where Organized: NEW YORK

Pages: 8

Execution Date: Mar. 03, 2003

State or Country Where Organized: No Place Where Organized Found

State or Country Where Organized: DELAWARE

Pages: 14

Execution Date: Sep. 08, 2004

State or Country Where Organized: No Place Where Organized Found



Name: HOLLYWOOD CASINO CORPORATION

Legal Entity Type: CORPORATION

State or Country Where  
Organized: DELAWAREAddress: 825 BERKSHIRE BLVD, SUITE 200  
WYOMISSING, PENNSYLVANIA 19610

Correspondent

Correspondent Name: PATRICIA G. CRAMER

Correspondent Address: 1735 MARKET STREET, 51ST FLOOR  
PHILADELPHIA, PA 19103-7599

Domestic Representative - Not Found

**Assignment 6 of 9**

Conveyance: TERMINATION AND RELEASE

Reel/Frame: 3171/0717

Pages: 18

Date Recorded: Oct. 07, 2005

Supporting Documents: assignment-tm-3171-0717.pdf

Assignor

Name: BEAR STEARNS CORPORATE LENDING INC.,  
AS COLLATERAL AGENT

Execution Date: Oct. 03, 2005

Legal Entity Type: CORPORATION

State or Country Where  
Organized: DELAWARE

Assignee

Name: PENN NATIONAL GAMING INC

Legal Entity Type: CORPORATION

State or Country Where  
Organized: PENNSYLVANIAAddress: 825 BERKSHIRE BLVD  
SUITE 200  
WYOMISSING, PENNSYLVANIA 19610Name: PENNSYLVANIA NATIONAL TURF CLUB, INC.

Legal Entity Type: CORPORATION

State or Country Where  
Organized: PENNSYLVANIAAddress: P.O. BOX 32  
GRANTVILLE, PENNSYLVANIA 17028Name: HOLLYWOOD CASINO CORPORATION

Legal Entity Type: CORPORATION

State or Country Where  
Organized: DELAWAREAddress: 825 BERKSHIRE BLVD.  
SUITE 200  
WYOMISSING, PENNSYLVANIA 19610Name: BSL, INC

Legal Entity Type: CORPORATION

State or Country Where  
Organized: MISSISSIPPIAddress: 711 CASINO MAGIC DRIVE  
BAY STREET  
LOUIS, MISSISSIPPI 39520Name: BTN, INC

Legal Entity Type: CORPORATION

State or Country Where  
Organized: MISSISSIPPI

Address: 676 BAYVIEW AVENUE,  
BILOXI, MISSISSIPPI 39533

**Correspondent**

Correspondent Name: CORPORATE SERVICES CORPORATION

Correspondent Address: 1133 AVENUE OF THE AMERICAS  
NEW YORK, NY 10036

Domestic Representative - Not Found

**Assignment 7 of 9**

Conveyance: SECURITY AGREEMENT

Reel/Frame: 3175/0228

Pages: 28

Date Recorded: Oct. 14, 2005

Supporting Documents: assignment-tm-3175-0228.pdf

**Assignor**

Name: ARGOSY GAMING COMPANY

Legal Entity Type: CORPORATION

Execution Date: Oct. 03, 2005

State or Country Where DELAWARE  
Organized:

Name: PENN NATIONAL GAMING INC

Legal Entity Type: CORPORATION

Execution Date: Oct. 03, 2005

State or Country Where PENNSYLVANIA  
Organized:

Name: PENNSYLVANIA NATIONAL TURF CLUB, INC.

Legal Entity Type: CORPORATION

Execution Date: Oct. 03, 2005

State or Country Where PENNSYLVANIA  
Organized:

Name: HOLLYWOOD CASINO CORPORATION

Legal Entity Type: CORPORATION

Execution Date: Oct. 03, 2005

State or Country Where DELAWARE  
Organized:

Name: LOUISIANA CASINO CRUISES, INC

Legal Entity Type: CORPORATION

Execution Date: Oct. 03, 2005

State or Country Where LOUISIANA  
Organized:

Name: BSL, INC

Legal Entity Type: CORPORATION

Execution Date: Oct. 03, 2005

State or Country Where MISSISSIPPI  
Organized:

Name: BTN, INC

Legal Entity Type: CORPORATION

Execution Date: Oct. 03, 2005

State or Country Where MISSISSIPPI  
Organized:

**Assignee**

Name: DEUTSCHE BANK TRUST COMPANY

Legal Entity Type: COLLATERAL AGENT

State or Country Where No Place Where Organized Found  
Organized:

Address: 60 WALL STREET  
AMERICAS, AS COLLATERAL AGENT  
NEW YORK, NEW YORK 10005

## Correspondent

Correspondent Name: CORPORATE SERVICES CORPORATION

Correspondent Address: 1133 AVENUE OF THE AMERICAS  
SUITE 3100  
NEW YORK, NY 10036

Domestic Representative - Not Found

**Assignment 8 of 9**

Conveyance: TRADEMARK RELEASE

Reel/Frame: 4584/0012

Pages: 25

Date Recorded: Jul. 15, 2011

Supporting Documents: [assignment-tm-4584-0012.pdf](#)

## Assignor

Name: DEUTSCHE BANK TRUST COMPANY  
AMERICAS, AS COLLATERAL AGENT

Execution Date: Jul. 14, 2011

Legal Entity Type: CORPORATION

State or Country Where DELAWARE  
Organized:

## Assignee

Name: ARGOSY GAMING COMPANY

Legal Entity Type: CORPORATION

State or Country Where DELAWARE  
Organized:Address: 825 BERKSHIRE BLVD., SUITE 200  
WYOMISSING, PENNSYLVANIA 19610Name: PENN NATIONAL GAMING, INC.

Legal Entity Type: CORPORATION

State or Country Where PENNSYLVANIA  
Organized:Address: 825 BERKSHIRE BLVD., SUITE 200  
WYOMISSING, PENNSYLVANIA 19610Name: PENNSYLVANIA NATIONAL TURF CLUB, INC.

Legal Entity Type: CORPORATION

State or Country Where PENNSYLVANIA  
Organized:Address: 777 HOLLYWOOD DRIVE  
GRANTVILLE, PENNSYLVANIA 17028Name: LOUISIANA CASINO CRUISES, INC.

Legal Entity Type: CORPORATION

State or Country Where LOUISIANA  
Organized:Address: 1717 RIVER ROAD NORTH  
BATON ROUGE, LOUISIANA 70802Name: HOLLYWOOD CASINO CORPORATION

Legal Entity Type: CORPORATION

State or Country Where DELAWARE  
Organized:Address: 825 BERKSHIRE BLVD., SUITE 200  
WYOMISSING, PENNSYLVANIA 19610Name: BSL, INC.

Legal Entity Type: CORPORATION

Address: 711 HOLLYWOOD BLVD., BAY  
ST. LOUIS, MISSISSIPPI 39520

State or Country Where MISSISSIPPI  
Organized:

Name: BTN, INC.

Legal Entity Type: CORPORATION

Address: 676 BAYVIEW AVENUE  
BILOXI, MISSISSIPPI 39530

State or Country Where MISSISSIPPI  
Organized:

Correspondent

Correspondent Name: JAMES P. MURPHY, LEGAL ASSISTANT

Correspondent Address: 80 PINE STREET  
CAHILL GORDON & REINDEL LLP  
NEW YORK, NY 10005

Domestic Representative - Not Found

**Assignment 9 of 9**

Conveyance: SECURITY AGREEMENT

Reel/Frame: 4584/0880

Pages: 27

Date Recorded: Jul. 18, 2011

Supporting Documents: assignment-tm-4584-0880.pdf

Assignor

Name: ARGOSY GAMING COMPANY

Legal Entity Type: CORPORATION

Execution Date: Jul. 14, 2011

State or Country Where DELAWARE  
Organized:

Name: PENN NATIONAL GAMING, INC.

Legal Entity Type: CORPORATION

Execution Date: Jul. 14, 2011

State or Country Where PENNSYLVANIA  
Organized:

Name: LV GAMING VENTURES, LLC

Legal Entity Type: CORPORATION

Execution Date: Jul. 14, 2011

State or Country Where NEVADA  
Organized:

Name: PENNSYLVANIA NATIONAL TURF CLUB, INC.

Legal Entity Type: CORPORATION

Execution Date: Jul. 14, 2011

State or Country Where PENNSYLVANIA  
Organized:

Name: HOLLYWOOD CASINO CORPORATION

Legal Entity Type: CORPORATION

Execution Date: Jul. 14, 2011

State or Country Where DELAWARE  
Organized:

Name: BTN, INC.

Legal Entity Type: CORPORATION

Execution Date: Jul. 14, 2011

State or Country Where MISSISSIPPI  
Organized:

Assignee

Name: WELLS FARGO BANK, NATIONAL ASSOCIATION, AS COLLATERAL AGENT

**Legal Entity Type:** INC. ASSOCIATION

**State or Country Where Organized:** UNITED STATES

**Address:** 333 S. GRAND AVE, 12TH FLOOR  
LOS ANGELES, CALIFORNIA 90071

**Correspondent**

**Correspondent Name:** JAMES P. MURPHY, LEGAL ASSISTANT

**Correspondent Address:** 80 PINE STREET  
CAHILL GORDON & REINDEL LLP  
NEW YORK, NY 10005

**Domestic Representative - Not Found**

## **EXHIBIT C**



[Español](#) [English](#) [CONTACT US](#)

[STAR STRUCK](#)  
[Our Concept](#)

[GREAT GRUB](#)  
[Menu](#)

[THE STAGE](#)  
[Locations](#)

[FUN TIMES](#)  
[Fan Club](#)

[COOL](#)  
[Merchandise](#)

[THE BUZZ](#)  
[Franchising](#)

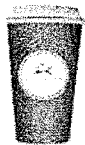
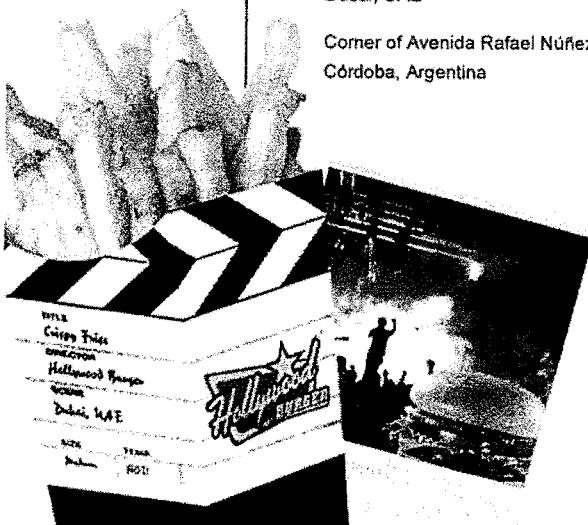
## Let's go to Hollywood!

Hollywood Burger's Flagship Restaurant is located at:  
1530 Avenida Hipólito Yrigoyen  
Downtown San Rafael, Mendoza  
Near the corner of Avenida Gral. Espejo

Coming soon!

The Boulevard, Oldtown  
Dubai, UAE

Corner of Avenida Rafael Núñez & Miguel Potel Junot  
Córdoba, Argentina



[Sign-Up](#)

© All Rights Reserved. Hollywood Burger Holdings, Inc. - 135 Fifth Avenue, 10th Floor - New York, NY 10010

# **EXHIBIT B**



ESTTA Tracking number: **ESTTA517315**

Filing date: **01/22/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91208417
Party	Defendant Hollywood Burger Holdings, Inc.
Correspondence Address	ERIC S. HUTNER HUTNER KLARISH LLP 1359 BROADWAY RM 2001 NEW YORK, NY 10018-7833  ehutner@hutnerklarish.com
Submission	Withdrawal Of Application
Filer's Name	Eric S. Hutner
Filer's e-mail	ehutner@hutnerklarish.com
Signature	/Eric S. Hutner/
Date	01/22/2013
Attachments	Express withdrawal of application-85_509,130.pdf ( 1 page )(9898 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

----- x	:	
HOLLYWOOD CASINO CORPORATION,	:	
	:	
Opposer,	:	
	:	
vs.	:	
	:	Opposition No. 91208417
HOLLYWOOD BURGER HOLDINGS INC.,	:	
	:	
Applicant.	:	
-----	:	----- x

**EXPRESS WITHDRAWAL OF APPLICATION**

Applicant, Hollywood Burger Holdings Inc., by its undersigned counsel, hereby  
expressly abandons Application Serial No. 85/509,130 with prejudice and without consent.

Dated: New York, New York  
January 22, 2013

HUTNER KLARISH LLP  
1359 Broadway, Suite 2001  
New York, NY 10018  
p: 212-391-9235/ f: 212-981-9122  
[ehutner@hutnerklarish.com](mailto:ehutner@hutnerklarish.com)

s/Eric S. Hutner  
By: \_\_\_\_\_  
Eric S. Hutner

Attorneys for Applicant

# **APPENDIX A**



Analysis

As of: Jul 28, 2013

**ALAN KUNSELMAN, Plaintiff/Appellant, v. BOARD OF EDUCATION OF WESTERN RESERVE LOCAL SCHOOL DISTRICT, Defendant/Appellee.**

**No. 92-3385**

**UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT**

***1993 U.S. App. LEXIS 14455***

**June 10, 1993, Filed**

**NOTICE:** [\*1] NOT RECOMMENDED FOR FULL-TEXT PUBLICATION. SIXTH CIRCUIT RULE 24 LIMITS CITATION TO SPECIFIC SITUATIONS. PLEASE SEE RULE 24 BEFORE CITING IN A PROCEEDING IN A COURT IN THE SIXTH CIRCUIT. IF CITED, A COPY MUST BE SERVED ON OTHER PARTIES AND THE COURT. THIS NOTICE IS TO BE PROMINENTLY DISPLAYED IF THIS DECISION IS REPRODUCED.

**SUBSEQUENT HISTORY:** Reported as Table Case at: 995 *F.2d* 1067, 1993 *U.S. App. LEXIS* 21151.

**PRIOR HISTORY:** ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO. District No. 91-02303. White, District Judge.

**DISPOSITION:** Affirmed.

**JUDGES:** BEFORE: MILBURN and RYAN, Circuit Judges; and COFFIN, Senior Circuit Judge. \*

\* Honorable Frank M. Coffin, Senior Circuit Judge, United States Court of Appeals for the First Circuit, sitting by designation.

**OPINION BY:** FRANK M. COFFIN

**OPINION**

FRANK M. COFFIN, Senior Circuit Judge. In this appeal, plaintiff Alan Kunselman seeks to set aside the dismissal of his complaint. Pursuant to a new local rule, the district court dismissed the suit based solely on Kunselman's

failure to respond timely to defendant's motion to dismiss. The court further denied Kunselman relief from judgment, finding that he had not shown neglect that excused his failure to respond to the motion. We affirm.

I.

Kunselman filed this action, pursuant to 42 U.S.C. § 1983, [\*2] seeking declaratory and injunctive relief against defendant Board of Education of Western Reserve Local School District (hereinafter Board).<sup>1</sup> The father of three children attending elementary school within the District, Kunselman alleges that the Board, in violation of the *establishment clause of the First Amendment*, promoted "the organized religion known as the Satanic Church" (and signalled a disapproval of the Christian religion) by using a devil symbol and/or the term "Blue Devils" as the school mascot and depicting the mascot on band and sports uniforms, diplomas, and a gymnasium wall.

1 Members of Kunselman's family joined in the suit below but were not named individually in the notice of appeal, which is styled *Alan Kunselman, et al. v. Board of Education of Western Reserve Local School District*. Therefore, Kunselman is the only plaintiff to perfect an appeal. See *Minority Employees of the Tenn. Dep't of Employment Sec., Inc. v. Tenn. Dep't of Employment Sec.*, 901 F.2d 1327, 1335-36 (6th Cir. 1990) (en banc).

[\*3] On January 7, 1992, the Board filed a motion to dismiss the complaint pursuant to Rule 12(b)(6) of the *Federal Rules of Civil Procedure*. Kunselman was required to respond to the motion within ten days of its service,<sup>2</sup> but he neither filed opposition papers nor requested an extension of time to do so. On January 29, 1992, 12 days after Kunselman should have acted, the district court granted the

Board's motion and entered judgment dismissing the case.

2 Rule 8:8.1(d) of the 1992 Local Rules of the United States District Court for the Northern District of Ohio provides:

Each party opposing a motion shall serve and file a memorandum in opposition within ten (10) calendar days after service of the motion.

In granting the motion to dismiss, the court relied on the new local rules for the Northern District of Ohio, which became effective January 1, 1992. Rule 8:8.1(j) permits the court to deem a party's failure to file a timely response to constitute consent to the granting of the motion.<sup>3</sup>

3 Rule 8:8.1(j) provides:

Memoranda required to be filed under this rule that are not timely filed by a party may not be considered and may be deemed by the Court to constitute the party's consent to the granting or denial of the motion as the case may be.

[\*4] On February 6, 1992, Kunselman filed a motion for relief from judgment pursuant to *Fed. R. Civ. P. 60(b)* and a motion for an enlargement of time to file a memorandum in opposition to defendant's motion to dismiss, *instantly*. In a memorandum and order entered on March 20, 1992, the district court denied both the *Rule 60(b)* motion and the motion for an enlargement of time because plaintiff had

not shown excusable neglect in failing to respond to the motion to dismiss within the time set forth in the local rules. The court also noted that Kunselman had failed to follow even former Local Rule 3.01, which required that an opposing memorandum be filed within ten days of the original motion.<sup>4</sup>

4 Former Local Rule 3.01 of the United States District Court for the Northern District of Ohio provides in relevant part:

(3) Each party opposing the motion shall serve and file within ten (10) days thereafter a brief written statement of reasons in opposition to the motion and a list of the authorities on which he relies. If the motion requires the consideration of facts not appearing of records he shall also serve and file copies of all documentary evidence and photographs which he intends to submit in opposition to the motion . . .

[\*5] This appeal followed. Kunselman now argues that the district court abused its discretion in dismissing the suit based solely on Local Rule 8:8.1(j), which he asserts is invalid, and in finding no excusable neglect in his failure to respond to the Board's motion to dismiss or to request an extension of time to file such response.

## II.

### A. Rule 60(b) Motion

The district court dismissed the complaint on January 29, 1992. It denied plaintiff's *Rule 60(b)* motion on March 20, 1992. Kunselman

did not file the notice of appeal until April 17, 1992. By this time, the thirty-day period in which to appeal the order of dismissal had expired, but plaintiff's appeal from the order denying his *Rule 60(b)* motion was timely. This court previously has recognized that "an appeal from denial of *Rule 60(b)* relief does not bring up the underlying judgment for review." *Peake v. First Nat'l Bank and Trust Co.*, 717 F.2d 1016, 1020 (6th Cir. 1983) (quoting *Browder v. Director, Dep't of Corrections*, 434 U.S. 257, 263, 54 L. Ed. 2d 521, 98 S. Ct. 556 n.7 (1978)). Accordingly, we do not have jurisdiction to consider the validity of the court's decision to dismiss [\*6] the complaint based on local Rule 8:8.1(j).

Pursuant to *Rule 60(b)*, a district court may relieve a party from final judgment upon a showing of, *inter alia*, mistake, inadvertence, surprise, or excusable neglect. *Fed. R. Civ. P. 60(b)*. Additionally, the party seeking relief must demonstrate that he has a meritorious claim on the merits. *Marshall v. Monroe & Sons, Inc.*, 615 F.2d 1156, 1160 (6th Cir. 1980). We review the court's decision to deny a *Rule 60(b)* motion only for abuse of discretion. *Peake*, 717 F.2d at 1020.

Kunselman seeks relief from the judgment of dismissal based on excusable neglect. He proffers excuses for his failures both to respond timely to the *Rule 12(b)(6)* motion and to request an extension of time. First, Kunselman claims that he did not know the requirements of local Rule 8:8.1(j) because, after receipt of the motion to dismiss, on January 10, 1992, his diligent efforts to learn the appropriate rule uncovered only old Rule 3.01.

The district court found that plaintiff's ignorance of local Rule 8:8.1(j) did not warrant relief. It relied on *Swimmer v. I.R.S.*, 811 F.2d 1343, 1345 (9th Cir. 1987), [\*7] in which a *pro se* litigant's ignorance of a rule's time requirement for responding to a motion was held not to constitute excusable neglect. A court's reluctance to excuse a *pro se* litigant's igno-

rance of the rules increase in the face of ignorance from counsel, and we previously have held that counsel's ignorance of a local rule does not constitute excusable neglect. *Kendall v. Hoover Co.*, 751 F.2d 171, 175 (6th Cir. 1984) (citations omitted). Moreover, as the district court noted, under both the old and new rules, Kunselman was required to file an opposition brief within ten days. Kunselman's ignorance of the new rule therefore cannot excuse his failure to file a brief within 10 days of service of the motion, and the court did not err in denying Kunselman relief from judgment based on his ignorance of the new rule.

Plaintiff's efforts to distinguish these cases and his reliance on older cases do not persuade us. The courts' earlier tolerance of failures to observe time requirements stemmed from the bar's lack of familiarity with the newly promulgated federal rules. Now, however, the bar is fully aware that time requirements exist and [\*8] cannot reasonably expect forgiveness due to simple inadvertence or mistake regarding the rules. See 4A Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1165, at 479-80 (1987).

Despite the 10-day response period, plaintiff took no action, neither filing a response nor seeking an extension of time. He excuses this inaction by claiming that he "reasonably relied upon the court's granting equal treatment to the requests of both Plaintiffs' and Defendant's motions for enlargement of time in not filing a Motion for Enlargement Of Time prior to January 17, 1992." Motion to Extend Time at P 6. This argument is specious. The Board had moved timely for an extension to file an answer and only then received a 20-day extension; by contrast, Kunselman waited 20 days, after action had been taken on the motion to dismiss, even to seek an extension of time. Moreover, because the filing of an answer and of opposition papers to a motion are completely distinct activities governed by separate rules, Kun-

selman's explanation of his dilatoriness is not reasonable and his delay is not excusable.

Finally, Kunselman alleges that the district court abused its discretion [\*9] in denying his motion because it improperly applied the local rule to dismiss the complaint. Kunselman cannot blend two distinct decisions by the district court, the first to dismiss the complaint and the second to deny the *Rule 60(b)* motion, to circumvent the narrow jurisdictional parameters of a *Rule 60(b)* appeal. As we discussed earlier, such an appeal does not confer authority to review the underlying judgment. Thus, the only question before us is whether the district court misapplied the law when it decided the *Rule 60(b)* motion. We conclude that the court properly applied the law governing motions for relief from judgment.

It is plaintiff who erred in not presenting the district court with any meritorious challenge to the judgment of dismissal. Kunselman legitimately could have questioned the validity of the "deemed consent" provision of Rule 8:8.1(j) as part of his *Rule 60(b)* motion. But he did not, and the district court, therefore, did not consider this issue. In our view, Kunselman cannot now blame the district court for his own mistake. Moreover, plaintiff cannot maintain on appeal an argument not raised below. See *Pinney Dock and Transport Co. v. Penn Cent. Corp.*, 838 F.2d 1445, 1461 (6th Cir. 1988). [\*10]

In sum, we conclude that Kunselman has not shown excusable neglect warranting relief from judgment. We thus find that the district court did not abuse its discretion in denying plaintiff's *Rule 60(b)* motion. Our conclusion likewise requires us to hold that there was no abuse in denying the ancillary motion for extension of time.

#### B. *Res judicata*

Subsequent to the entry of final judgment in this case, the Kunselman family brought a second, allegedly identical, action. The district

court presiding in the new action has stayed that action pending our decision in this case and requested our view as to whether the judgment of dismissal bars the second action. We respectfully decline. To pronounce our views on the preclusive effects of our decision

would carry us beyond the matters before us and, in effect, would constitute a non-binding advisory opinion.

*Affirmed.*